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Falls Church, Virginia 22041

File: [REDACTED] - Dallas

Date: OCT 20 1998

In re: [REDACTED]

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Andrew L. Farkas, Esquire

ON BEHALF OF SERVICE: James R. Blinn, Jr.
Assistant District Counsel

CHARGE:

Order: Sec. 241(a)(1)(B), I&N Act [8 U.S.C. § 1251(a)(1)(B)] -
In the United States in violation of law

APPLICATION: Asylum, withholding of deportation, voluntary departure

In an oral decision rendered June 27, 1995, the Immigration Judge found the respondent deportable as charged under section 241(a)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1251(a)(1)(B), as having overstayed her visa. The Immigration Judge denied the respondent's applications for asylum, withholding of deportation, and voluntary departure, under sections 208(a), 243(h), and 244(e) of the Act, 8 U.S.C. §§ 1158(a), 1253(h), and 1254(e), respectively. The respondent has appealed from the denial of her application for asylum and withholding of deportation, arguing that she has established a well-founded fear of persecution based on her deafness (social group) and her belief in Christianity.¹ The appeal will be dismissed because we agree with the Immigration Judge that she has not established a well-founded fear of persecution.

I. FACTUAL BACKGROUND

We set out the facts in this case in some detail because of the unusual nature of the respondent's claim. The respondent is a 30-year-old deaf female, a native and citizen of Thailand. The respondent conceded that she is deportable as charged and was represented by counsel. The respondent's husband, her mother-in-law, and her uncle testified on her behalf.

¹ The Immigration and Naturalization Service moved to dismiss the appeal as untimely filed. We have considered its motion, as well as the respondent's reply. In order to resolve any issue as to the timeliness of the appeal, we hereby certify the record for our review. 8 C.F.R. § 3.1(c) (1995).

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The respondent and three deaf friends of the respondent, one of whom is a native of Thailand, testified through an American Sign Language (ASL) interpreter. Their collective testimony is summarized below.

The respondent began attending a public school in Thailand, but was failing because there were no interpreters for the deaf, there were no public schools for the deaf, and she is not proficient at reading lips. People at the public school ridiculed her and, from the scars indicated, apparently harmed her. She "was basically sitting there with nothing to do" (Tr. at 267-8). Therefore, she attended a private school for the deaf, using mostly home signs and other methods of communication, intermittently because of transportation and funding problems, until she was 16-years-old. She was refused a National Identification Card until her father paid a bribe; she believes that this is because she is deaf. She sought employment in 5 or 6 different places, but she was not hired because she was deaf. She stated that it was against the law in Thailand for deaf people to drive. A deaf person could not own their own home, but could rent an apartment with their parents support. Other witnesses agreed with the conclusions that deaf people cannot drive in Thailand, and could not own their own homes.

The respondent stated that a friend of hers suggested that they become prostitutes because they had no money. Her father forbade this. She went with her friend, but her father found her and took her home before she could become a prostitute. The evidence indicates that many deaf people in Thailand become prostitutes to earn money. The respondent's uncle added that some people prey on deaf children because the children had few options. Many deaf people panhandle on the streets. Deaf people in Thailand generally live with their families and are not allowed to live by themselves. The respondent claimed that she feared returning to Thailand because she might be forced into prostitution, that her parents were very strict and that her life would be the same as before she left.

The respondent's uncle corroborated these general conditions and added that the respondent's parents neglected her because they could not easily communicate with her and forced her to do housework, basically as a servant; and that the respondent had attempted suicide 2 or 3 times. The respondent's Thai friend also corroborated these general conditions, and further noted that he never saw deaf people living alone or away from their families; and that they had "low caliber" jobs such as maintenance, printing, selling flowers, and washing dishes. As of 1984, he stated there were no closed-caption videos, sign interpreters, or TTD in Thailand.

The respondent also converted from Buddhism to Christianity after entering the United States. The respondent joined the Southern Baptist denomination. She testified that the major religion in Thailand is Buddhism. She stated that people who had converted from Buddhism to Christianity were persecuted and ridiculed in Thailand. The respondent conceded that she was part of a group that ridiculed those who converted; she may have thrown rocks at them.

The respondent introduced voluminous documentary evidence, including the respondent's marriage license, birth certificate, baptismal certificate, passport, application for asylum and detailed affidavit. The respondent introduced affidavits from other individuals.

II. THE IMMIGRATION JUDGE'S DECISION

In a thorough decision the Immigration Judge found the respondent deportable as charged, denied the asylum and withholding application, and denied voluntary departure. He found the respondent to be a credible witness, who subjectively believed that she would be persecuted if forced to return to Thailand. The Immigration Judge found no evidence to support the respondent's contention that she would suffer persecution on account of her religious conversion because the Country Reports on Human Rights Practices for 1994 and a Department of State advisory letter indicated that freedom of religion was tolerated in Thailand. He further found that the government of Thailand treated the deaf differently from the hearing populace, and that the government did not enforce a law concerning the hiring of disabled workers. The Immigration Judge found that the government does not intend to harm its deaf citizens, and that the Thai culture and government places the burden of education and care on the family members of the deaf. He concluded that the lack of economic opportunities facing the deaf in Thailand did not constitute persecution within the meaning of the asylum laws. Although the Immigration Judge found the respondent deserving of asylum in the exercise of discretion, he determined that she did not meet the definition of a refugee.

III. ISSUES ON APPEAL

The issues raised on appeal are whether the Immigration Judge erred in denying the respondent's application for asylum or withholding of deportation based on her alleged fear of persecution on account of her membership in a particular social group and her religious belief.

IV. ANALYSIS

We agree with the Immigration Judge's decision that the respondent has not established eligibility for asylum or withholding of deportation. However, we make our own findings of fact in this case and reach our decision by a different route.

A. The General Law of Asylum

The respondent must establish the facts of the case and the sufficiency of those facts in satisfying the requirements for asylum eligibility. See Matter of Dass, 20 I&N Dec. 120 (BIA 1989). The respondent must demonstrate that she is a "refugee" within the meaning of section 101(a)(42)(A) of the Act, 8 U.S.C. § 1101(a)(42)(A), to be eligible for asylum. The respondent must establish that she was persecuted or that a reasonable person in her circumstances would fear persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, in his native country. See INS v. Cardoza-Fonseca, 480 U.S. 421 (1987). She is not required to show conclusively why persecution has occurred or may occur, but she must produce evidence from which it is reasonable to believe that the harm was motivated by a protected ground. Matter of S-P-, Interim Decision 3287, at 5 (BIA 1996).

The respondent must establish four things to establish a well-founded fear of persecution: (1) she possesses a belief or characteristic a persecutor seeks to overcome by means of punishment of some sort; (2) the persecutor is already aware, or could become aware, that she possesses this

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belief or characteristic; (3) the persecutor has the capability of punishing her; and (4) the persecutor has the inclination to persecute her. See Matter of Acosta, 19 I&N Dec. 211, 226 (BIA 1985), modified Matter of Mogharrabi, *supra*, at 446.

The respondent must establish a clear probability of persecution in the country designated for deportation on account of a protected ground to be eligible for withholding of deportation. INS v. Stevic, 467 U.S. 407 (1984); 8 C.F.R. § 208.16(b). This means that the alien must establish that it is more likely than not that she would be subject to persecution for one of the grounds specified. *Id.*

B. Religion

At the outset, we note that a peripheral issue consumed a substantial amount of time during the hearing. The respondent testified that she participated in harming children of the Christian faith because of their religion while she was a child being raised in the Buddhist religion. After reviewing the record, we do not see these facts as giving rise to any concern that the respondent had committed persecution. Rather we look to these events as illuminative of whether the respondent should fear persecution upon her return to Thailand because of her Christian beliefs.

We agree with the Immigration Judge that the respondent has not established that her conversion from Buddhism to Christianity gives rise to a well-founded fear of persecution. As the Department of State has noted in direct response to the respondent's application for asylum, "The assertions that there are no freedom of religion and that Southern Baptists are persecuted by the established Buddhist authorities are patently false. Thailand is extremely tolerant of Western Christian religious practice" (Exh. 2). Against this backdrop, the respondent has only testified generally that she fears persecution because of her religion. The respondent has introduced no evidence that disputes or contradicts the Department of State's opinion. Accordingly, we find no error in the Immigration Judge's decision regarding this issue.

C. Social Group

The larger issue presented by this case is whether the respondent has a well-founded fear of persecution on account of her membership in a social group, i.e., deaf people in Thailand. The decision of the Immigration Judge summarized the respondent's claim succinctly:

The primary basis for her claim and one which elicits a great deal of sympathy on the part of this Immigration Judge, concerns her belief that the treatment which deaf citizens of Thailand receive from their government constitutes persecution within the meaning of the Act. It is abundantly clear to this Immigration Judge from an assimilation and consideration of all the evidence, that the available opportunities for deaf people in the United States are far, far greater than those opportunities available in the nation of Thailand. The evidence is clear that in Thailand that nation, for reasons which are apparently historic and cultural, chooses to address the welfare of their disabled citizens by placing them in the custody of their parents and essentially denying them an opportunity to achieve what would be referred to in the United States as full emancipation. In this regard, a deaf individual in Thailand cannot own property, cannot have a driver's license, has exceedingly limited employment opportunities, and is essentially under the constant supervision of her parents for at least the remainder of their

lives. The respondent testified and the evidence appears clear that there is a tremendous amount of prostitution in Thailand. The respondent believes that many deaf women are forced into prostitution based upon either having been sold into that endeavor by their families or because there are no other opportunities available for them. She testified that she was encouraged to participate in prostitution by her deaf friends and was seriously considering such possibility but was prevented from doing so by her family members. . . . Respondent testified as to the difficulty associated with acquiring the national ID card and further testified that her efforts at finding employment in the restaurant trade or in other menial ways was unsuccessful. From her perspective, it appears that her lot in life was to be essentially a household servant based upon the policies of the Thai government and the accepted culture within Thailand.

(I.J. Decision, at 10-11). The issue is whether this treatment is persecution or a basis for a well-founded fear of persecution. We agree with the Immigration Judge that it is not.

We begin by accepting for the purposes of argument the notion that "deaf people in Thailand" constitute a "social group" within the meaning of the Act. Section 101(a)(42)(A) of the Act, 8 U.S.C. § 1101(a)(42)(A) (1994); Matter of Acosta, 19 I&N Dec. 211, 233-4 (BIA 1985); Matter of Mogharrabi, *supra*; Matter of H-, Interim Decision 3276 (BIA 1996); Matter of Kasinga, Interim Decision 3278 (BIA 1996); accord Fatin v. INS, 12 F.3d 1233, 1240 (3d Cir. 1993); see also Gomez v. INS, 947 F.2d 660, 664 (2d Cir. 1991) (holding that a social group must be recognizable and discrete, allowing would-be persecutors to identify victims as members of the purported group).

Even if the social group is definable as deaf people in Thailand, on this record the persecution inflicted or feared is less specific and vague. The Act provides no definition of "persecution," and this court has not previously articulated the same. "Persecution" embodies punishment or the infliction of suffering or harm on account of the a protected ground in a way that is offensive. See Bradvica v. INS, 128 F.3d 1009, 1012 (7th Cir.1997); Surita v. INS, 95 F.3d 814, 819 (9th Cir.1996); Prasad v. INS, 47 F.3d 336, 339 (9th Cir.1995)). Harassment or discrimination without more does not rise to the level of persecution. Ghaly v. INS, 58 F.3d 1425, 1431 (9th Cir.1995); Bradvica, 128 F.3d at 1012; see Bastanipour v. INS, 980 F.2d 1129, 1133 (7th Cir.1992). "Persecution" within the meaning of section 1101(a)(42)(A) of the Act requires more than a few isolated incidents of verbal harassment or intimidation, unaccompanied by any physical punishment, infliction of harm, or significant deprivation of liberty. Mikhailevitch v. INS, 146 F.3d 384 (6th Cir. 1998).

The difference between persecution and discrimination is one of degree; there is no hard and fast line to draw. Generally, the persecution of members of minority groups differs from discrimination against them in being either official and severe, or nonofficial but lethal and condoned. Giving an official imprimatur to discrimination magnifies its gravity. Accordingly, a law barring the deaf from owning housing or driving because they are deaf without more would more likely constitute persecution, even if it did not prevent them from earning a livelihood. Cf. Borca v. INS, 77 F.3d 210, 215-17 (7th Cir.1996). Furthermore, a wave of attacks on deaf people, or a campaign of expulsions from the country, would also constitute persecution even if the pogroms or the expulsions were merely condoned rather than orchestrated by the government. Hengan v. INS, 79 F.3d 60, 61-63 (7th Cir. 1996); Arteaga v. INS, 836 F.2d 1227, 1231 (9th Cir.1988). The cumulative effect of multiple incidents of discrimination,

harassment, and violence may constitute persecution. See Surita v. INS, *supra*, at 819-20; see also Gaya-Prasad v. INS, 101 F.3d 614, 617 (9th Cir.1996). There is no bright line between discrimination and persecution. Applying the distinction to this case, we agree with the Immigration Judge that while the respondent has suffered discrimination, she has not suffered persecution. Cf. Bucur v. INS, 109 F.3d 399, 403 (7th Cir. 1997).

The factual portrait of life in Thailand for the deaf is well-established in this record. The witnesses testified to a number of specific facts, including that the deaf could not own a home or acquire a driver's license. However, the testimony is not clear as to whether these limitations are the specific product of governmental regulation or policy, or cultural customs. Similarly, the identity of the "persecutor" is unclear; it may be that the respondent fears persecution by the government of Thailand or her own family.

For example, although the respondent contends that she cannot acquire a National Identity Card, she has not established that this is a form of persecution by the government. In fact, she acquired a National Identity Card through her father's bribe. Another deaf witness testified that he acquired a card in the same manner. It is not clear from the record whether such a card indicates that the respondent or others are deaf. The bribe itself was discounted by the respondent's uncle, who indicated that a bribe must be paid "every time" an individual applied for any benefit (Tr. at 42). Although there is evidence that every person must acquire a National Identity Card at age 15, it is not at all clear how this is accomplished by hearing individuals or in contrast to the family paying a bribe.

Additionally, the issue of whether deaf people can acquire housing on their own does not appear from this record to be a matter of governmental prohibition. Rather, the only testimony on this issue is conclusory or predicated on the economic inability of deaf individuals (or their parents) to purchase housing. The respondent has not produced any evidence that the government of Thailand has prohibited deaf people from purchasing housing through any form of law or policy.

Finally, the evidence does not indicate that the law or policy of Thailand prohibits deaf people from acquiring a driver's license, or that this prohibition is a form of persecution. No evidence has been introduced that deaf people have applied for licenses and were specifically rebuffed by the government. We note, parenthetically, that State drivers' licenses in the United States are restricted on the basis of an individual's disabilities and that certain disabilities bar an individual from being licensed. The respondent has not established what restrictions are imposed by the Thai government on deaf people and that these restrictions are imposed as a form of persecution.

In this case, the respondent appears to argue that the law of Thailand or governmental practice is persecution. However, the respondent has not introduced any evidence of the law of Thailand or its policies. The law of a foreign country is a question of fact that must be established by the respondent if she relies on it to establish eligibility for asylum. See Matter of Annang, 14 I&N Dec. 502 (BIA 1973). The law of a foreign country is a fact for which that we may reasonable expect corroborating evidence, particularly since such codes are available in many law libraries in the United States. See Matter of S-M-J, Interim Decision 3303 (BIA 1997); Matter of Dass, *supra*; Matter of Mogharrabi, *supra*. Although the respondent has introduced two anecdotes about acquiring the National Identity Card through bribery, there is

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no evidence except subjective conclusions that deaf people cannot lawfully acquire such a card, a driver's license or housing, and that this is persecution. Even if this prohibition is only a cultural custom or more, we believe that it is reasonable to expect some form of documentation of its existence beyond the witness' testimony, such as reports of non-governmental organizations or cultural academic studies.

The opinion of the Department of State, after consultation with its local embassy officials, contradicts the conclusion that these deprivations are government sponsored (Exh. 2). Similarly, the country reports produced by the Department of State indicate that certain laws are not enforced, there is no indication in the country reports that this is a form of persecution (Respondent's Pre-Trial Statement, Exh. J, at 699). The Department of State opinion unequivocally reports that the government of Thailand does not persecute the deaf, although society may discriminate against them. Country information submitted by the Department of State is entitled to considerable deference. Matter of T-M-B, Interim Decision 3307 (BIA 1997). Although these reports may differ from the respondent's own experience, the burden of proof is on the respondent to establish that her individual circumstances or those of her group are not reflected in the country reports, and to counter the specific comments made by the Department of State with regard to her claim.

Therefore, we agree with the Immigration Judge that the respondent has not established past persecution or a well-founded fear of persecution on account of any of the five grounds for granting asylum. Inasmuch as the respondent has failed to satisfy the lower burden of proof required for asylum, it follows that she also has failed to satisfy the clear probability standard of eligibility required for withholding of deportation. See INS v. Stevic, 467 U.S. 407 (1984). The evidence does not establish that if he were to return to Thailand that it is more likely than not that she would be subject to persecution on account of one of the five grounds specified in section 243(h) of the Act.

V. CONCLUSION

The respondent's claims to do not amount to persecution on account of any of the five protected grounds of sections 101(a)(42) and 243(h) of the Act. The respondent is not statutorily eligible for asylum or withholding of deportation. In light of the respondent's failure to establish statutory eligibility for asylum, we need not reach the issue of whether, as a matter of discretion, the respondent should be granted asylum. The decision of the Immigration Judge will be affirmed. The appeal will be dismissed.

ORDER: The appeal is dismissed.



FOR THE BOARD